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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 107

[Docket No. PHMSA-2012-0185 (HM-208I)]

RIN 2137-AE95

Hazardous Materials; Temporary Reduction of Registration Fees

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final Rule.

SUMMARY: The Federal hazardous materials transportation law requires DOT to adjust the amount of the annual registration fee to account for any unexpended balance in the Hazardous Materials Emergency Preparedness (HMEP) Fund. Due to an unexpended balance that has accumulated in the Fund, PHMSA is lowering the registration fees for registration year 2013-2014 for all persons, as defined in PHMSA regulations, that transport or offer for transportation in commerce certain categories and quantities of hazardous materials. Specifically, for registration year 2013-2014 the fee for a small business or not-for-profit organization is revised to be \$125 (plus a \$25 processing fee), and for all other businesses the fee is \$1300 (plus a \$25 processing fee). After the 2013-2014 registration year, the registration fees will return to 2012-2013 registration year levels.

Additionally, PHMSA is making an editorial change to its regulations to clarify the appropriate fee amounts; there are no substantive changes other than the addition of the fees for 2013-2014 and for 2014-2015 and later.

In order to make the change effective for the 2013-2014 registration year and thus draw down the unexpended balance as soon as possible, PHMSA is issuing this final rule

without a prior notice of proposed rulemaking in accordance with good cause exemption specified in the Administrative Procedures Act. Additionally, for good cause this final rule is effective immediately.

DATES: Effective date: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. David Donaldson, Outreach, Training, and Grants Division (PHH-50), (202) 366-4484, or Ms. Deborah Boothe, Standards and Rulemaking Division (PHH-10), (202) 366-8553, PHMSA, East Building, 1200 New Jersey Avenue, SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

The PHMSA Hazardous Materials (HM) Grants Program is designed to enhance the training of the nation's emergency response personnel, and to encourage the development of local emergency planning. The HM Grants Program is comprised of three emergency preparedness grants: Hazardous Materials Emergency Preparedness (HMEP) Grants, Supplemental Public Sector Training (SPST) Grants, and Hazardous Materials Instructor Training (HMIT) Grants. The program is funded by registration fees collected from hazmat shippers and carriers that offer for transportation or transport certain hazmat in intrastate, interstate, or foreign commerce in accordance with 49 CFR Part 107, Subpart G.

These fees fund training and planning grants, monitoring and technical assistance, curriculum development, and staffing costs. Registration fees also fund the publication and distribution of the Emergency Response Guidebook (ERG). Planning activities are integral to the implementation of effective emergency preparedness programs. Grantee planning activities are often focused on the identification and assessment of hazmat transportation risks

within their communities (e.g., which commodities are shipped, the volume and frequency of those shipments, availability of current emergency response plans, etc.). Training at more advanced levels is essential to assure emergency response personnel are capable of effectively and safely responding to releases of hazardous materials. PHMSA requires the use of the NFPA Standard 472, “Standard for Competence of Responders to Hazardous Materials/Weapons of Mass Destruction Incidents”, available at: <http://www.nfpa.org>, in the development of its PHMSA funded training programs.

In accordance with the “Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005” (Title VII of the Safe, Accountable, Flexible, Efficient Transportation Equity Act-A Legacy for Users (SAFETEA-LU), Public Law 109-59, 119 Stat. 1144, August 10, 2005) an obligation limitation of \$28.3 million may be expended each year from the HMEP Fund for the following purposes:

- \$21,800,000 to make emergency response planning and training grants to States and Indian tribes (of which at least 75% must be used for planning and training at the local level), under 49 U.S.C. 5116(a) & (b) (HMEP Grants);
- Up to \$4,000,000 to make grants to nonprofit hazardous materials employee organizations to train instructors to train hazmat employees and for the instructors to train the hazmat employees, under 49 U.S.C. 5107(c) (HMIT Grants);
- \$1,000,000 to make grants to national nonprofit fire service organizations to train instructors to provide hazardous materials response training to emergency responders, under 49 U.S.C. 5116(j) (SPST Grants);
- \$150,000 for monitoring emergency response planning and training and coordinating assistance through the National Response Team and Federal Radiological Preparedness Coordinating Committee, under 49 U.S.C. 5116(f);

- \$188,000 to develop and update a national curriculum for training public sector emergency response and preparedness teams, under 49 U.S.C 5115;
- \$625,000 to revise, publish, and distribute the Emergency Response Guidebook, under 49 U.S.C. 5116(i)(3); and
- \$555,000 for administrative expenses, under 49 U.S.C. 5116(i)(4).

As specified in 49 CFR Part 107, Subpart G, PHMSA requires persons, as defined in § 171.8 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180), that offer or transport certain types and quantities of hazardous materials to file an annual registration statement and pay a fee. Since 2010, the current annual registration fee has been set at \$250 (plus a \$25 processing fee) for small businesses, as defined by the Small Business Administration (SBA) size standard, and for not-for-profit organizations under 26 U.S.C. 501(a), and \$2,575 (plus a \$25 processing fee) for all other registrants. (See 49 CFR § 107.612(a)).

Three main factors influence both the amount of funds collected and expended in a given year: (1) the number of persons that will register, (2) the total amount of grants requested in applications and for which funds will be obligated, and (3) the activities which will not be actually completed so that funds will later be “de-obligated.”

II. Statutory Requirement to Adjust Registration Fees

The Federal hazardous materials transportation law (See 49 U.S.C. 5108(g)(2)(B)) requires the Secretary to adjust the amount of the annual registration fee "to reflect any unexpended balance in the account" of the HM grants program. During 2009 and 2010, evaluations of the HM Grants Program were performed internally by PHMSA and by an

outside audit service¹. As a result of the findings, PHMSA implemented a comprehensive plan that has established greater accountability of operations, enhanced oversight of grantees, and increased clarification of allowable program expenses, which has encouraged grant applicants to better evaluate their own programs and grant expenditures. In addition, PHMSA has taken a proactive approach to more thoroughly explain the grant program and authorized expenditures to the states and tribes. An intended outcome of this effort is to increase the impact of PHMSA grant funding on local community preparedness and decrease de-obligations.

As of December 31, 2012, the HMEP Grants Fund had an unexpended balance of \$13.1 million. The primary reason for the current unexpended balance is due to an accumulation of HMEP grant de-obligations. An initial result of PHMSA's effort to enhanced oversight of grantees has been a reduction in the amount of grant funds actually utilized, as grantees adjust to the changes, which has led to slightly higher than usual de-obligations in recent years. As grantees revise and improve their programs, PHMSA expects to realize a significant reduction in grantee de-obligations. Based on PHMSA's calculations, cutting the fee in half for one year should eliminate the unexpended balance. PHMSA's calculations indicate that, with appropriate oversight, returning to the current fee structure after the one year reduction is appropriate. During the 2011-2012 registration year, PHMSA collected \$26,487,806 in registration fees, which is less than the \$28,318,000 obligation limitation from Congress². Under the reduced 2013-2014 rates, PHMSA is assuming that roughly the same number of entities will register, so the anticipated collections are roughly \$13.4 million. This collection combined with the unexpended balance of \$13.1 million will

¹Audit findings are available at the following URL: <http://www.oig.dot.gov/library-item/5699>

²Registration statistics are available at the following URL: <http://phmsa.dot.gov/hazmat/library/data-stats/registration>

fund the program at or slightly below the obligation limitation level. This rule is a one-year adjustment to the fees, but since the unexpended balance accumulated for several reasons and over several years, PHMSA is dedicated to: 1) working with grantees to more fully explain the HM Grants Program and authorized expenditures in order to decrease de-obligations to the maximum extent possible and 2) monitoring closely, and considering additional actions, as needed, to account for any future unexpended balance.

III. Registration Program Amendments

PHMSA's fundamental goals of the registration fee system are for the system to be simple, straightforward, easily implemented, and enforceable; employ an equity factor reflecting the differences in level of risk to the public and the financial impact associated with the business activities of large and small businesses; and ensure adequate funding for the HM Grants Program (See 65 FR 7302-03). PHMSA has determined adjusting the fee for all entities by an equal proportion for registration year 2013-2014 is the best approach to meet the fundamental goals of the registration fee system. To carry out these goals and eliminate the unexpended balance in the HMEP Fund, PHMSA is reducing the registration fee for the 2013-2014 registration year (July 1, 2013 – June 30, 2014) to:

- \$125 (plus \$25 processing fee) for a small businesses or not-for-profit organizations; and
- \$1300 (plus \$25 processing fee) for all other businesses.

These amounts represent a 50% reduction in the fee paid by a small business or not-for-profit organization and all other business categories. The one-year reductions are being applied to all registrants at an equal rate because an accumulation of de-obligations is the primary cause of the current unexpended balance in the HMEP Fund.

Additionally, PHMSA is making an editorial change to § 107.612 to clarify the appropriate fee amounts; there are no substantive changes other than the addition of the fees for 2013-2014 and for 2014-2015 and later.

The Administrative Procedure Act provides that notice of a proposed rulemaking need not be published in the Federal Register “when the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” (See 5 U.S.C. 553(b)(3)(B)). For the same reasons, a final rule can become effective immediately (See 5 U.S.C. 553(d)). PHMSA has found that it is unnecessary to provide notice and comment on the regulatory changes adopted in this rule as these amendments limit PHMSA’s discretion and simply account for statutory requirements. In addition, it is impracticable to provide notice and comment on the regulatory changes adopted in this rule, as doing so would not permit these amendments to be effective and implemented for the 2013-2014 registration year. Further, it is contrary to the public interest to provide notice and comment because it potentially delays relief to entities that are entitled by statute to lower registration fees. Therefore, PHMSA is issuing this final rule without a prior notice of proposed rulemaking and making it effective immediately.

IV. Multi-Year Registrations

PHMSA permits a person to register for up to three years in one registration statement. See 49 CFR § 107.616(c). PHMSA applies fees according to the fee structure ultimately established by regulation for the registration year rather than according to the fee set at the time of payment. Thus, the temporary decrease in registration fees in this final rule means that lower fees will be applied to any registrations paid in advance at the higher levels in

effect at the time of payment. PHMSA will notify each registrant that will be eligible to request a refund for the 2013-2014 registration year and issue refunds.

V. Rulemaking Analyses and Notices

A. Statutory/Legal Authority for this Rulemaking

This final rule is issued under the authority of the Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 et seq.). Section 5108 of the Federal hazmat law authorizes the Secretary of Transportation to establish a registration program to collect fees to fund the HM Grants Program. The program, as mandated by 49 U.S.C. 5116, authorizes Federal financial and technical assistance to states and Indian tribes to “develop, improve, and carry out emergency plans” within the National Response System and the Emergency Planning and Community Right-To-Know Act of 1986 (Title III), 42 U.S.C. 11001 et seq.

B. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to formal review by the Office of Management and Budget. This rule is considered non-significant under the Regulatory Policies and Procedures of the Department of Transportation. See 44 FR 11034.

To address the unexpended balance in the HM Fund, PHMSA is temporarily reducing registration fees for the 2013-2014 registration year. After the 2013-2014 registration year, the registration fees will return to 2012-2013 registration year levels. PHMSA will continue to evaluate the registration fee structure and may issue further regulations modifying the fee structure in the future pending the results of this evaluation and our outreach efforts to reduce de-obligations.

The temporary reduction in registration fees adopted by the final rule will amount to a one year, \$13.2 million cost savings for industry. A revised fee of \$125 (plus a \$25 processing fee) for small businesses and not-for-profit organizations and \$1300 (plus a \$25 processing fee) for all other businesses, collected from 40,375 registrants (33,300 small businesses and not-for-profit organizations and 7,075 other-than-small businesses) for the 2013-2014 registration year will satisfy the statutory requirements. PHMSA considers this reduction equitable, since all registrants subject to the registration program would have their fee decreased by approximately 50 percent. A regulatory evaluation for this rule is available for review in the public docket.

Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866 Regulatory Planning and Review of September 30, 1993. In addition, Executive Order 13563 specifically requires agencies to identify and consider regulatory approaches that reduce burden and maintain flexibility; and modify and streamline, existing regulations that are unclear. The regulatory approach adopted in this rulemaking will reduce the burden and provide flexibility for our stakeholders by offering a one year reduction of registration fees as well as modifying and simplifying our regulatory text by adding an easily understood fee table into the regulations.

This final rule is designed to eliminate an unexpended balance (surplus) in the HMEP Fund of approximately \$13.1 million dollars by reducing registration fees for all persons required to register for registration year 2013-2014. This final rule reduces the registration fee for the 2013-2014 registration year in accordance with Federal law and makes editorial changes to the associated regulatory text. It does not conflict with Executive Order 12866, Executive Order 13563, or DOT Regulatory Policies and Procedures.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (Federalism). There is no preemption of state fees on transporting hazardous materials that meet the conditions of 49 U.S.C. 5125(f). This rule does not impose any regulation having substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Because this final rule does not have adverse tribal implications and does not impose direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply, and, a tribal summary impact statement is not required.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601-611) requires each agency to analyze regulations and assess their impact on small businesses and other small entities to determine whether the rule is expected to have a significant impact on a substantial number of small entities. The provisions of this rule apply specifically to all businesses required to register. Therefore, PHMSA certifies this rule would not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$141.3 million or more, in the aggregate, to any of the following: state, local, or Native American tribal governments, or the private sector.

G. Paperwork Reduction Act

Under 49 U.S.C. 5108(i), the information management requirements of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) do not apply to this final rule.

H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

I. Environmental Impact Analysis

The National Environmental Policy Act, of 1969 (NEPA), as amended (42 U.S.C. 4321-4347), requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. When developing potential regulatory requirements, PHMSA evaluates those requirements to consider the environmental impact of each amendment. Specifically, PHMSA evaluates the: risk of release and resulting environmental impact; risk to human safety, including any risk to first responders; longevity of the packaging; and if the proposed regulation would be carried out in a defined geographic area, the resources, especially any sensitive areas, and how they could be impacted by any proposed regulations.

There are no significant environmental impacts associated with this final rule. This final rule reduces the registration fee for the 2013-2014 registration year in accordance with Federal law and makes editorial changes to the associated regulatory text.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) which may be viewed at <http://www.gpo.gov/fdsys/pkg/FR-2000-04-11/pdf/00-8505.pdf>.

K. Executive Order 13609 and International Trade Analysis

Under E.O. 13609, agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Public Law 96-39), as amended by the Uruguay Round Agreements Act (Public Law 103-465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the

standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards in order to protect the safety of the American public, and we have assessed the effects of the final rule to ensure that it does not cause unnecessary obstacles to foreign trade. Accordingly, this rulemaking is consistent with E.O. 13609 and PHMSA's obligations.

List of Subjects in 49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

In consideration of the foregoing, we amend 49 CFR Part 107 as follows:

PART 107 -- HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 is revised to read as follows:

Authority: 49 U.S.C. 5101-5128, 44701; Pub. L. 101-410 section 4 (28 U.S.C. 2461 note); Pub. L. 104-121 sections 212-213; Pub. L. 104-134 section 31001; 49 CFR 1.81, 1.97.

2. Section 107.612 is revised to read as follows:

§ 107.612 Amount of fee.

(a) For purposes of determining the applicable annual registration fee specified in paragraph (b) of this section, the following classification applies to each person required to register and pay a registration fee:

(1) Small business. A person that qualifies as a small business, under criteria specified in 13 CFR part 121 applicable to the North American Industry Classification System (NAICS) code that describes that person's primary commercial activity.

(2) Not-for-profit organization. An organization exempt from taxation under 26 U.S.C. 501(a).

(3) Other than a small business or not-for-profit organization. Each person that does not meet the criteria specified in paragraph (a)(1) or (a)(2) of this section.

(b) Each person subject to the requirements of this subpart must pay the processing fee specified in paragraph (c) of this section and the annual registration fee set forth in the following table:

Registration year	Small business	Not-for-profit organization	Other than small business or not-for-profit organization
2014-2015 and later	\$250	\$250	\$2,575
2013-2014	\$125	\$125	\$1,300
2012-2013 2011-2012 2010-2011	\$250	\$250	\$2,575
2009-2010 2008-2009 2007-2008 2006-2007	\$250	\$250	\$975
2005-2006 2004-2005 2003-2004	\$125	\$125	\$275
2002-2003 2001-2002 2000-2001	\$275	Fee appropriate for small or other than small business	\$1,975
1999-2000 and earlier	\$250	\$250	\$250

(c) Each person submitting a registration statement must pay the following processing fee in addition to the registration fees specified in paragraph (b) of this section:

(1) For registration years 2000-2001 and later, the processing fee is \$25 for each registration statement filed. A single statement may be filed for one, two, or three registration years as provided in § 107.616(c).

(2) For registration years 1999-2000 and earlier, the processing fee is \$50 for each registration statement filed. A separate statement must be filed for each registration year.

Issued in Washington, DC on April 15, 2013 under authority delegated in 49 CFR part 1.

Cynthia L. Quarterman, Administrator
Pipeline and Hazardous Materials Safety Administration

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